

² 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation benefits and medical benefits, effective February 2, 2020, as she no longer had disability or residuals causally related to her accepted July 23, 2012 employment injury; and (2) whether appellant met her burden of proof to establish continuing disability or residuals on or after February 2, 2020 causally related to her accepted July 23, 2012 employment injury.

FACTUAL HISTORY

On August 8, 2012 appellant, then a 31-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on July 23, 2012 she sustained a low back injury when she helped lower a patient who had slid from the edge of a stretcher to the floor while in the performance of duty. She stopped work on July 24, 2012 and returned to part-time modified duty on August 30, 2012.³ On October 7, 2013 OWCP accepted appellant's claim for a lumbar strain and upper back strain.

Appellant was followed by Dr. Kerry M. Girard, a Board-certified internist, who held her off work from October 17, 2013 onward due to her accepted conditions. OWCP accepted a recurrence of total disability commencing October 17, 2013. It paid appellant wage-loss compensation on the supplemental rolls, effective October 17, 2013, and on the periodic rolls, effective April 6, 2014. Appellant continued to receive medical treatment.

In a June 17, 2014 report, Dr. Martina Stippler, a Board-certified neurosurgeon, noted that appellant had undergone an anterior posterior L3-S1 fusion in 2008 for right-sided lumbar and lower extremity pain. She reviewed a May 30, 2014 magnetic resonance imaging (MRI) scan demonstrating surgical changes with no compression of the right L5 nerve root. Lumbar flexion and extension x-rays demonstrated an intact L3-5 fusion and fixation. Dr. Stippler recommended a spinal cord stimulator.⁴

On February 23, 2015 OWCP obtained a second opinion regarding the nature and extent of appellant's employment-related conditions from Dr. Christopher B. Geary, a Board-certified orthopedic surgeon. Dr. Geary reviewed medical records and the SOAF. On examination he noted a mildly antalgic gait, some tenderness to palpation in the lumbar area at the midline, decreased lumbar motion secondary to pain, bilaterally positive supine straight leg raising tests, and subjective numbness in the L5-S1 distribution. Dr. Geary diagnosed chronic degenerative low

³ Appellant has a prior claim, under OWCP File No. xxxxxx979 for an April 25, 2005 low back injury allegedly sustained when she bent forward to pick up towels. OWCP processed the claim as a short form closure. Appellant also has a prior claim under OWCP File No. xxxxxx933 concerning a January 19, 2010 low back injury sustained when she slipped on ice outside of the employing establishment. OWCP processed this claim as a short form closure. However, the statement of accepted facts (SOAF) dated August 28, 2019 indicated that OWCP File No. xxxxxx933 was accepted. Under OWCP File No. xxxxxx964, OWCP accepted an October 15, 2011 lumbar sprain sustained when holding and lifting a falling patient. Appellant's claims have been administratively combined with OWCP File No. xxxxxx894 serving as the master file.

⁴ Appellant received opioid medication management from Dr. Ashraf M. Farid, a Board-certified anesthesiologist, commencing July 1, 2014.

back pain unrelated to the employment injury. He opined that the July 23, 2012 lumbar injury had resolved without residuals and that appellant had reached maximum medical improvement (MMI). Dr. Geary noted work restrictions related to chronic back pain unrelated to the accepted injury.

OWCP found a conflict of medical opinion between Dr. Girard, for appellant, and Dr. Geary, for the government, regarding the nature and extent of the accepted injuries. To resolve the conflict, it referred appellant to Dr. William F. Garrahan, a Board-certified orthopedic surgeon for an impartial medical examination.

In a May 18, 2015 report, Dr. Garrahan reviewed medical records and a SOAF. On examination he noted a positive straight leg raising test and possible weakness in the right lower extremity. Dr. Garrahan diagnosed persistent pain in the low back and right lower extremity continually since May or June 2012. He opined that appellant was permanently disabled by back pain caused by the accepted July 23, 2012 employment injury. In a July 30, 2015 supplemental report, Dr. Garrahan found her totally and permanently disabled from work due to right-sided L5 radiculopathy attributable to the accepted employment injury.

In an October 20, 2015 report, Dr. Stippler again recommended a spinal cord stimulator to address progressive degenerative disc disease at L2-3 demonstrated on an MRI scan.

In a report dated November 17, 2015, Dr. Kathleen M. Killilea, a Board-certified anesthesiologist, noted that a September 28, 2015 lumbar MRI scan demonstrated interval progression to advanced L2-3 degenerative disc disease, with unchanged status-post L3-S1 fusion, posterior spinal fixation, and bilateral L3-L5 laminectomies. She diagnosed failed back syndrome and right-sided lumbar radiculopathy.⁵

Appellant received opioid medication management from Dr. Schahid Rawoof, a Board-certified anesthesiologist, from February 25, 2016 through 2018.⁶

OWCP received periodic chart notes by Dr. Girard dated April 28, 2015 through November 7, 2016, diagnosing failed back syndrome.

In a June 3, 2019 report, Dr. Rawoof diagnosed increasing radicular leg pain with episodes of bladder incontinence. He opined that appellant's condition had worsened.

On September 4, 2019 OWCP referred appellant, the medical record, and an August 28, 2019 SOAF and as series of questions to Dr. Peter Mebel, a Board-certified orthopedic surgeon, for a second opinion on the nature and extent of the employment-related conditions. The SOAF noted appellant's prior claims, including OWCP File Nos. xxxxxx933 and xxxxxx964, both administratively combined under the present claim, OWCP File No. xxxxxx894.

⁵ A February 19, 2016 lumbar MRI scan demonstrated severe disc desiccation with loss of disc height at L2-3.

⁶ Dr. Rawoof administered a series of OWCP-authorized epidural steroid injections from October 6, 2016 through April 5, 2019. Appellant underwent nonoccupational right knee surgery on May 2, 2019 with osteochondral allograft transplantation and anterior medialization of the tibial tubercle.

In an October 24, 2019 report, Dr. Mebel noted the SOAF and reviewed medical records. He provided a history of the July 23, 2012 employment injury. On examination Dr. Mebel noted a nontender midline lumbosacral surgical scar, markedly restricted thoracolumbar motion, bilaterally positive straight leg raising tests, stocking hypoesthesia throughout the right lower extremity, and normal deep tendon reflexes at the knees and ankles bilaterally. He explained that appellant “had multiple back and neurologic problems prior” to the July 23, 2012 employment injury, “and these preexisting conditions are responsible for her ongoing symptoms, rather than any sequelae from the July 23, 2012 work injury.” Dr. Mebel diagnosed a resolved thoracolumbar back sprain and opined that appellant had attained MMI. He found appellant disabled from her date-of-injury position and from gainful employment secondary to back and neurologic dysfunction prior to the 2012 employment injury.

In a November 4, 2019 report, Dr. Rawoof noted that appellant required additional facet injections from T12 through L2 due to increased midback pain. He diagnosed lumbar post-laminectomy syndrome and radicular pain of the right lower extremity.

On December 5, 2019 OWCP advised appellant of its notice of proposed termination of her wage-loss compensation and medical benefits based on Dr. Mebel’s October 24, 2019 report. It afforded her 30 days to submit evidence or argument if she disagreed with the proposed termination.

By decision dated January 7, 2020, OWCP terminated appellant’s wage-loss compensation and medical benefits, effective February 2, 2020, based on Dr. Mebel’s October 24, 2019 report.

On March 27, 2020 OWCP received a February 13, 2020 report by Dr. Rawoof, noting appellant’s continued lumbar and radicular pain.

On November 17, 2020 appellant, through counsel, requested reconsideration. In support thereof, she provided a July 9, 2020 report by Dr. Paul Glazer, a Board-certified orthopedic surgeon, who diagnosed lumbar degenerative disc disease, status-post lumbar fusion, and arthrodesis. Dr. Glazer recommended additional imaging studies.

A July 16, 2020 lumbar MRI scan demonstrated L2-3 disc degeneration with mild spondylosis, and status post L3-4 through L5-S1 fusion.

By decision dated December 21, 2020, OWCP denied modification of the January 7, 2020 termination decision, finding that appellant had not established continuing disability or medical residuals due to her July 23, 2012 employment injury.

On March 15, 2021 appellant, through counsel, requested reconsideration. In support thereof, she submitted a March 10, 2021 report by Dr. Byron V. Hartunian, a Board-certified orthopedic surgeon. Dr. Hartunian noted that appellant developed low back pain and right radicular pain in 2007, unrelated to her federal employment, and underwent a lumbar laminectomy. Appellant sustained a low back injury in a November 2008 motor vehicle accident and underwent subsequent lumbar fusion from L3 through S1. She returned to full-duty work from 2009 through 2012 until she sustained the accepted July 23, 2012 employment injury. On examination Dr. Hartunian found severe limitation of lumbar motion. He diagnosed status-post cervical, thoracic, and lumbar fusions, chronic thoracic and lumbar muscle strain. Dr. Hartunian opined

that appellant remained totally and permanently disabled for work due to sequelae of the July 23, 2012 employment injury, unrelated to the 2008 lumbar fusion.

By decision dated May 28, 2021, the OWCP hearing representative affirmed the December 21, 2020 termination decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of compensation benefits.⁷ It may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.⁸ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁹

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹⁰ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.¹¹

The Federal (FECA) Procedure Manual provides that the findings of an OWCP referral physician or impartial medical specialist must be based on the factual underpinnings of the claim, as set forth in the SOAF.¹² When OWCP's referral physician or impartial medical specialist does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is diminished or negated altogether.¹³

⁷ *D.C.*, Docket No. 21-0780 (issued December 22, 2021); *R.R.*, Docket No. 20-1653 (issued May 17, 2021); *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁸ *J.M.*, Docket No. 21-0071 (issued August 27, 2021); *T.S.*, Docket No. 19-0476 (issued September 24, 2020); *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *see also I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁹ *D.C.*, *supra* note 7; *J.O.*, Docket No. 20-0519 (issued November 30, 2020); *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

¹⁰ *M.R.*, Docket No. 20-0993 (issued August 27, 2021); *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

¹¹ *A.A.*, Docket No. 21-0222 (issued November 17, 2021); *M.E.*, Docket No. 20-0877 (issued August 17, 2021); *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statement of Accepted Facts*, Chapter 2.809.1 (September 2009).

¹³ *Id.* at Chapter 3.600.3(10) (October 1990).

ANALYSIS -- ISSUE 1

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 2, 2020.

In his October 24, 2019 report, second opinion physician Dr. Mebel opined that appellant had no continuing residuals or disability warranting further wage-loss compensation or medical benefits. He noted in his October 24, 2019 report that appellant had no objective signs of the accepted July 23, 2012 lumbar and upper back strains on examination. Dr. Mebel concluded that appellant was disabled for work due to multiple back and neurologic problems sustained prior to the July 23, 2012 employment injury.

As Dr. Mebel did not differentiate any preexisting conditions from the accepted July 23, 2012 low back injury, the Board finds that Dr. Mebel's opinion is not sufficiently rationalized to carry the weight of the medical evidence.¹⁴

The Board, therefore, finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 2, 2020.

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 2, 2020.¹⁵

¹⁴ C.W., Docket No. 20-1339 (issued September 15, 2021; *see* G.Y., Docket No. 19-1683 (issued March 16, 2021); M.R., Docket No. 17-0634 (issued July 24, 2018).

¹⁵ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the May 28, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 28, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board